

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**IN RE: NATIONAL PRESCRIPTION  
OPIATE LITIGATION**

THIS DOCUMENT RELATES TO:

*All Cases*

**MDL No. 2804  
Case No. 17-MD-2804  
Judge Dan Aaron Polster**

**PLAINTIFFS MOTION SEEKING LEAVE TO FILE UNDER SEAL CONFIDENTIAL  
DOCUMENTS AS EXHIBITS IN SUPPORT OF THEIR RESPONSE TO KROGER'S  
OBJECTION TO THE ORDER REGARDING FRANCES TUCKER'S DEPOSITION**

Plaintiffs hereby file this Motion pursuant to Local Rule 5.2 seeking to file under seal confidential documents as Exhibits in support of Plaintiffs Response to Kroger's Objection to the Order Regarding Frances Tucker's Deposition, and to redact quotations from such confidential documents within the Response, and aver as follows:

1. On June 6, 2023, Plaintiffs noticed the deposition of Kroger in-house counsel Frances Tucker.
2. On July 5, 2023, Kroger filed a Motion for Protective Order seeking to prevent the deposition of Ms. Tucker.
3. On August 8, 2023, Special Master Cohen issued an Order denying Kroger's Motion for Protective Order. (Doc. 5176.)
4. On August 21, 2023 Kroger filed an Objection to Special Master Cohen's Discovery Ruling Regarding Tucker Deposition. (Doc. 5155).
5. In Plaintiff's Response to Kroger's Objection Plaintiff cites to, quotes, and attaches a number of discovery documents to the Response as Exhibits, some of which have been designated as confidential pursuant to the Case Management Order No. 2: Stipulated Protective Order dated May 15, 2018. (See Doc. 441.)

6. Plaintiffs request leave from the Court under Local Rule 5.2 to file the following seventeen (17) confidential discovery material/documents under seal, and to redact quotations from the confidential discovery materials/documents within the Response:

- a. Exhibit 1 - Kroger's Pharmacy Compliance Committee Charter
- b. Exhibit 2 – Kroger Email, Kroger-MDL00224878
- c. Exhibit 3 – Kroger's Responses to Plaintiffs Request for Production
- d. Exhibit 4 – Chronological Composite Pharmacy Compliance Committee Meeting Minutes
- e. Exhibit 5 – Plaintiffs Motion to Compel Production of Custodial File of Frances Tucker Using Kroger National Search Terms
- f. Exhibit 8 – Kroger Email, Kroger-MDL00222888
- g. Exhibit 9 – Kroger PowerPoint, KrogerMDL00002558
- h. Exhibit 10 – Deposition Transcript Excerpt of the February 22, 2022 30(b)(6) deposition of Kroger Regarding Substantive Dispensing Issues
- i. Exhibit 11 – Kroger Pharmacy Conference Summary, KrogerMDL00002571
- j. Exhibit 12 – Deposition Transcript of the June 21, 2023 deposition of Lamar Hardman
- k. Exhibit 13 – Kroger Email, Kroger-MDL00207605
- l. Exhibit 14 – Kroger Emails, Kroger-MDL00254564 and Kroger-MDL00255677
- m. Exhibit 15 – Kroger Emails, Kroger-MDL00227551, Kroger-MDL00254587, and Kroger-MDL00254608
- n. Exhibit 16 – Buzzee Internal Audit Report on Kroger SOMS, KrogerSmithNMAG00013075
- o. Exhibit 17 – Kroger Email, Kroger-MDL00156124
- p. Exhibit 18 – Kroger Email, Kroger-MDL00156136
- q. Exhibit 19 – Deposition Transcript Excerpt of the February 22, 2022 30(b)(6) deposition of Kroger Regarding Substantive Dispensing Issues

7. Local Rule 5.2 provides for the filing of documents under seal pursuant to a prior court order that authorizes the filing of sealed documents. Local Rule 5.2.

8. It is necessary to file the documents listed above as supporting Exhibits to the Objection under seal because they are subject to the 5/15/18 Stipulated Protective Order. Further, the filing of this Motion for Leave and filing these documents under seal are authorized by and contemplated by the parties under the 5/15/18 Stipulated Protective Order. (*See* Doc. 441, ¶¶ 62-63.)

9. Within five (5) days of the filing of the Response, Kroger should advise which of the above-listed Exhibits should remain under seal and provide its reasoning regarding the same.

**WHEREFORE**, Plaintiffs respectfully request that this Honorable Court enter the proposed Order, granting Plaintiffs leave to file under seal confidential documents as Exhibits in support of Plaintiffs Response to Kroger's Objection to the Order regarding Frances Tucker's Deposition, and to redact quotations from the confidential documents within the Response.

Dated: September 5, 2023

Respectfully submitted,

/s/Jeff R. Gaddy

Jeff R. Gaddy

Levin, Papantonio, Rafferty, Proctor,  
Buchanan, O'Brien, Barr, and Mougey, P.A.

316 S. Baylen Street, Suite 600

Pensacola, FL 32502-5996

Tel.: 850-435-7068

Fax: 850-436-6068

[jgaddy@levinlaw.com](mailto:jgaddy@levinlaw.com)

*Attorney for Plaintiffs*

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on September 5, 2023, a true and correct copy of the foregoing Plaintiffs Motion for Leave under Local Rule 5.2 to file under seal confidential documents as Exhibits in support of Plaintiffs Response to Kroger's Objection to the Order regarding Frances Tucker's deposition, was filed with the Clerk of the Court by using the CM/ECF system, copies of which will be served on counsel of record by the Court's CM/ECF system.

/s/ Jeff R. Gaddy

Jeff R. Gaddy

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**IN RE: NATIONAL PRESCRIPTION  
OPIATE LITIGATION**

THIS DOCUMENT RELATES TO:

*All Cases*

**MDL No. 2804  
Case No. 17-MD-2804  
Judge Dan Aaron Polster**

**PROPOSED ORDER**

**AND NOW**, this \_\_ day of \_\_\_\_\_, 2023, upon consideration of the Plaintiff's Motion Seeking Leave to File Under Seal confidential documents as Exhibits in support of Plaintiff's Response to Kroger's Objection to the Order regarding Frances Tucker's deposition and to redact quotations from such confidential documents within Plaintiff's Response, pursuant to Local Rule 5.2 and the Case Management Order No. 2: Stipulated Protective Order dated May 15, 2018 (Doc. 441), it is hereby **ORDERED** that Plaintiff's Motion Seeking Leave is **GRANTED**.

Further, within five (5) days of the filing of the Response, Kroger shall advise Plaintiffs which of the sealed exhibits should remain under seal and should provide its reasoning for any such exhibits.

**BY THE COURT:**

\_\_\_\_\_  
DAN AARON POLSTER  
United States District Judge